

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 14, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Weber State Federal Credit Union
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Serial No. 88675314
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Margaret N. McGann and Jonathan H. Love of Parsons Behle & Latimer,
for Weber State Federal Credit Union.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114,
Laurie Kaufman, Managing Attorney.

—
Before Kuhlke, Coggins, and English,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Weber State Federal Credit Union (“Applicant”) seeks registration on the
Principal Register of the mark ASCENT FEDERAL CREDIT UNION (in standard
characters, with FEDERAL CREDIT UNION disclaimed) for

Credit union services, namely, providing checking and
savings accounts, mortgage lending, savings and loan
services, bill payment, financing, ATM banking services,
individual retirement accounts, payroll tax debiting
services, and electronic banking via the global computer

network, excluding providing lease financing for private student loans, in International Class 36.¹

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the financial services identified in the application, so resembles the stylized, blue-and-white mark **Ascent** registered on the Principal Register for "providing lease financing for private student loans," in International Class 36,² as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final, Applicant requested reconsideration, which was denied. Applicant then appealed to this Board and again requested reconsideration. After the Examining Attorney denied the second request for reconsideration, the appeal was resumed and briefed. We reverse the refusal to register.

I. Likelihood of Confusion

Our determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, referred to as "*DuPont* factors"); *see also In re Majestic Distilling*

¹ Application Serial No. 88675314 was filed on October 31, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's allegation of a bona fide intention to use the mark in commerce.

² Registration No. 5325374, issued October 31, 2017. According to the registration: "The mark consist[s] of the wording 'ASCENT' in stylized blue font. The 'A' letter is capitalized and larger. The mark is on a white background." The colors blue and white are claimed as a feature of the mark. The registration also identifies services in Classes 41 and 45 which were not cited by the Examining Attorney and therefore are not at issue in this ex parte appeal.

Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). The Board considers those *DuPont* factors for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *see also Stratus Networks, Inc. v. UBTA-UBET Commc'ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, *3 (Fed. Cir. 2020) (“Not all *DuPont* factors are relevant in each case . . .”).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities of the services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the [services].’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)). Another factor to be considered when there is evidence of record is the number and nature of similar marks in use with similar services. *DuPont*, 177 USPQ at 567; *see also Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015).

A. Similarity of the Services, Trade Channels, and Consumers

We must make our determination based on the services as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The issue is not whether the services will be confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods [or services] in question are different from, and thus not related to, one another in kind, the same goods [or services] can be related in the mind of the consuming public as to the origin of the goods [or services].”); *see also In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *5 (TTAB 2020); *L’Oreal v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012). It is sufficient that the services of Applicant and Registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 14711, 1476 (Fed. Cir. 2000). The application and registration themselves may provide evidence of the relationship between the services. *Hewlett-Packard v. Packard Press*, 62 USPQ2d at 1005.

As indicated above, the services in the application are “credit union services” and specifically include “checking and savings accounts, mortgage lending, savings and loan services, bill payment, financing” and other financial services; and the services at issue in the cited registration are “providing lease financing for private student loans.”

Noting the ambiguity in Registrant’s identified services, Applicant observes that “[i]t is not entirely clear how leasing applies in the student loan context because leasing often involves the use of a tangible asset.” 12 TTABVUE 12.³ We agree that the services in the cited registration are somewhat ambiguous due to the word “lease,” which, as Applicant notes, “often involves the use of a tangible asset.” *Id.* Indeed, a “lease” is “a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent,”⁴ so it is difficult to understand how leasing applies in context with student loans.⁵ Because the services in the cited registration are somewhat ambiguous, we turn to extrinsic evidence of Registrant’s services

³ Citations to the briefs in the appeal record refer to the TTABVUE docket system. Citations to the prosecution file refer to the .pdf version of the TSDR system record. *In re Consumer Protection Firm*, 2021 USPQ2d 238, *3 n.3 (TTAB 2021).

⁴ We take judicial notice of the definition of “lease” from the MERRIAM-WEBSTER.COM DICTIONARY, accessed September 10, 2021. *See, e.g., Performance Open Wheel Racing, Inc. v. U.S. Auto Club Inc.*, 2019 USPQ2d 208901, at *4 n.34 (TTAB 2019) (Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006) (same).

⁵ The evidence explaining that “lease financing” is popular for vehicles, equipment, and software, and favored by small businesses and individuals who want to use an asset but avoid a significant upfront capital expenditure for that asset, demonstrates the ambiguity. *See Exhibit J to February 5, 2021 Request for Reconsideration at 114-120.*

submitted by Applicant with the February 5, 2021 Request for Reconsideration. As the Board stated in *In re Trackmobile, Inc.*, 15 USPQ2d 1152 (TTAB 1990):

[W]hen the description of [services] for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of [services] has a specific meaning to members of the trade. . . . [I]t is not proper to rely simply upon abstract reasoning to give this somewhat vague term a broad meaning absent countervailing extrinsic evidence showing that it is entitled to such a broad meaning. (Internal citations omitted).

15 USPQ2d at 1154. Although we usually may not use extrinsic evidence to limit or otherwise restrict the scope of the services identified in the cited registration, *see, e.g.*, *In re Thor Tech*, 90 USPQ2d 1634, 1638 (TTAB 2009) (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”), we may use extrinsic evidence, when appropriate, for the purpose of ascertaining the precise nature of the services, as is necessary here. *Trackmobile*, 15 USPQ2d at 1154.

When we examine the excerpts from Registrant’s website, we note that the cited mark **Ascent** appears thereon, and text explains that:

Our promise: Ascent empowers you to reach even higher goals, greater success and an even brighter future.

Student loans should expand your possibilities, not limit them.

Ascent is built around one guiding principle: loans should expand possibilities, not limit them. That’s why Ascent created a new private student loan program that gives students more opportunities to qualify for a loan, with or without a cosigner. ***

Goal Solutions, Inc. (Goal) and Richland State Bank (RSB) created Ascent Student Loans to help revolutionize the way people pay for college. Goal is an award-winning consumer finance company . . . [l]ed by an executive team with decades of experience in consumer loans. Goal manages over \$26B in consumer assets, and has invested over \$200M of its own capital in performing and nonperforming loan portfolios. ***

Launch Servicing is responsible for sending statements and processing payments for Ascent Student Loans. ***

Ascent Funding, LLC products are made available through Richland State Bank, member FDIC. All loans are subject to individual approval and adherence to underwriting guidelines. Program restrictions, other terms, and conditions apply. Variable interest rates may increase after consummation.

We reserve the right to modify or discontinue (in whole or in part) this loan program and its associated services and benefits at any time without notice. Check www.AscentFunding.com for the most up-to-date information.⁶

These excerpts indicate that Registrant was created by two other entities (i.e., Goal and RSB) and, as the combination of those entities, offers student loan “products”⁷ – that is, Registrant offers student loans. In an effort to move the cited services away from technical lending services, Applicant argues “it appears that Registrant generally offers private student loan origination services,” 12 TTABVUE 12, which is not the same as “student loan services generally or even general banking services and should not be [considered] in the same category.” 15 TTABVUE 5-6.

⁶ See February 5, 2021 Request for Reconsideration at 122-23 (AscentFunding.com/about).

⁷ *Id.* at 123.

However, the website evidence shows that the nature of Registrant's services (i.e., providing lease financing for private student loans) is effectively the provision of student loans. These loans may be funded by RSB and serviced by Launch, but Registrant is the one who provides the product. That is, Registrant's "lease financing for private student loans" service is the provision of private student loans.

We do not consider the ambiguity of the cited services in a vacuum. Other evidence of record demonstrates that it is not unusual for one party to offer student loans that another entity technically funds. For example, student loans offered through Randolph-Brooks, PARDA, and Parkview Community Federal Credit Unions "are made by Sallie Mae Bank or a lender partner;"⁸ OUR Credit Union also "[p]rovid[es students] with loan options through [its] partnership with Sallie Mae;"⁹ North Iowa Community Credit Union partners "with Iowa Student Loan to offer a private student loan option;"¹⁰ and Unity Catholic Federal Credit Union "partner[s] with LendKey, a private student loan underwriter, to provide the Unity Catholic Federal Credit Union Private Student Loan Program."¹¹ Accordingly, when we view the extrinsic evidence of record in context, we resolve the ambiguity in Registrant's identification of services to mean that Registrant offers student loans.

Having resolved the ambiguity, we find that the record shows that the respective services are related. Indeed, but for the exclusionary language in Applicant's

⁸ August 21, 2020 Office Action at 103 (rbfcu.org), 108 (parda.com), 113 (pc-fcu.org).

⁹ *Id.* at 141 (ourcuonline.org).

¹⁰ *Id.* at 129 (niccu.com).

¹¹ *Id.* at 131-33 (unitycatholiccu.org).

identification of services, Applicant's broadly worded "loan" and "financing" services would necessarily include the student loans which Registrant offers. *See S.W. Mgmt., Inc. v. Ocinoled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015) (where services are broadly identified, they are deemed to encompass all of the services of the nature and type described); *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'").

Applicant argues that as a credit union it "run[s] a considerably smaller operation[]" than a traditional bank, and that very few credit unions offer private student loans. 12 TTABVUE 11, 12; *see also* 15 TTABVUE 5 ("[C]redit unions rarely provide student loans."). The Examining Attorney, on the other hand, argues that "[b]anking services and student loan services emanate from the same sources. The same consumers would encounter both banking and student loan services and are likely to be confused as to the source of the services." 14 TTABVUE 15. In support of this position, the Examining Attorney made of record articles from the Internet demonstrating that credit unions offer student loans. For example:

- 121 Financial Credit Union (blog.121fcu.org)¹²
Credit Union Student Loans: Pros and Cons | 121 Financial
"In this article, we'll discuss and go into detail about the pros and cons of credit union student loans."

"In the area of student loans, credit unions operate much the same as the federal government. For instance, borrowers will have the

¹² April 10, 2020 Office Action at 5, 6, 12.

option of making low payments – or no payments – while attending school.”

“Some [credit unions] don’t offer student loans like 121, while others limit loans that they offer to undergraduate students. Others only refinance student loans.”

- Georgia Department of Law, Consumer Protection Division (consumer.georgia.gov)¹³

Banks, Credit Unions and Savings & Loans

“Today’s consumers have many banking choices. A commercial bank may offer . . . business and student loans and even investment advice. . . . A credit union is a not-for-profit financial institution with membership based on a common characteristic Depending on their size, credit unions generally offer the same products as banks and savings and loans.”

This is corroborated with evidence submitted by Applicant:

- CREDITUNIONS.COM (creditunions.com)¹⁴

Cooperatives Outperform In Student Lending

“Credit unions nationwide are making more student loans and taming delinquency rates.”

“Student loan balances at credit unions nationwide increased 16.8%, or \$772.2 million, year-over-year. Cooperatives have now reported double-digit annual student loan growth for eight consecutive quarters. Since 2011, when credit unions began reporting student lending activity on the 5300 Call Report, total balances in the loan product have nearly quadrupled.”

In addition, the record is replete with webpages showing third parties offering credit union and student loan services under the same mark. For example:

- PARDA Federal Credit Union (e-macity.com)¹⁵ and (parda.com)¹⁶
- United Financial Credit Union (unitedfinancialcu.org)¹⁷

¹³ August 21, 2020 Office Action at 74.

¹⁴ February 5, 2021 Request for Reconsideration at 106.

¹⁵ April 10, 2020 Office Action at 27.

¹⁶ August 21, 2020 Office Action at 105-111.

¹⁷ *Id.* at 87-99.

- Randolph-Brooks Federal Credit Union (rbfcu.org)¹⁸
- Parkview Community Federal Credit Union (pc-fcu.org)¹⁹
- Chicago Patrolmen’s Federal Credit Union (cpdfcu.com)²⁰
- Los Angeles Federal Credit Union (lafcu.org)²¹
- Fitzsimons a Partnering Credit Union (fitzsimonscu.com)²²
- North Iowa Community Credit Union (niccu.com)²³
- Unity Catholic Federal Credit Union (unitycatholiccu.org)²⁴

We find that the third-party webpage evidence showing the same mark used for both credit union services and student loans is probative to demonstrate that Applicant’s services and Registrant’s services are related for likelihood of confusion purposes. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both.”); *In re Embiid*, 2021 USPQ2d 577, at *22-23 (TTAB 2021) (citing *Ox Paperboard*, 2020 USPQ2d 10878, at *5; and *Hewlett-Packard v. Packard Press*, 62 USPQ2d at 1004); *In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012) (Internet excerpts from “several third-party car dealerships offering ‘tires’ for sale on their websites” was “evidence that consumers expect to find both ‘tires,’ . . . “and ‘automobiles’ . . . emanating from a common source.”).

¹⁸ *Id.* at 100-04.

¹⁹ *Id.* at 112-14.

²⁰ *Id.* at 115-16.

²¹ *Id.* at 117-18.

²² *Id.* at 119-120.

²³ *Id.* at 129-130.

²⁴ *Id.* at 131-33.

The Examining Attorney also made of record many used-based registrations covering both sets of services. For example:

- Registration No. 3517907
Mark: YOU'RE FIRST
Services include "credit union services" and "student loans"²⁵
- Registration No. 3698637
Mark: WSFS
Services include: "checking and savings accounts" and "student loans"²⁶
- Registration No. 4459296
Mark: STAND TALL
Services include: "credit union and banking services" and "student loans"²⁷
- Registration No. 5135377
Mark: ELEVATIONS
Services include: "credit union services" and "student loans"²⁸
- Registration No. 5083579
Mark: PEOPLE HELPING PEOPLE
Services include: "credit union services" and "student loans"²⁹
- Registration No. 5608370
Mark: LIVE SMARTER
Services include: "credit union services" and "student loans"³⁰
- Registration No. 5985365
Mark: BANK WITH YOUR BRAIN
Services include: "credit union services" and "student loan services"³¹

²⁵ August 21, 2020 Office Action at 7.

²⁶ *Id.* at 9-10.

²⁷ *Id.* at 15.

²⁸ *Id.* at 18-19.

²⁹ *Id.* at 21.

³⁰ *Id.* at 39.

³¹ *Id.* at 47-48.

- Registration No. 5947509
Mark: CUREVL
Services include: “credit union services,” “private student loan underwriting,” “private student loan processing and servicing private student loans,” and “underwriting, origination and funding of in-school and refinanced private student loans”³²
- Registration No. 5856124
Mark: YOUR BUCK STARTS HERE
Services include: “credit union services” and “origination, servicing, and refinancing of . . . student loans”³³
- Registration No. 5974034
Mark: HUDSON VALLEY CREDIT UNION
Services include: “credit union and banking services” and “student loans services”³⁴

The registrations have probative value to the extent that they serve to suggest that the listed services are of a type that may emanate from the same source. *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *8 (TTAB 2019); *In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018); *Albert Trostel & Sons*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

Applicant argues that it expressly excluded Registrant’s lease financing of student loan services from its own identification of services, but that the Examining Attorney “essentially ignored the exclusion.” 12 TTABVUE 13. Consumers are, of course, unaware of this limitation in the application, and it is “not controlling of public perception.” *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1188 (TTAB 2018) (citing *In re The Clorox Co.*, 578 F.2d 305, 198 USPQ 337, 340 (CCPA 1978) (“[T]he

³² *Id.* at 56.

³³ *Id.* at 62.

³⁴ *Id.* at 65-66.

locus of potential confusion is [not] in the files of the PTO.”)). In any event, despite the limitation, Applicant’s services remain related to those in the cited registration as demonstrated by the evidence of record. As set forth above, the second *DuPont* factor considers not whether services are legally identical or even competitive, but whether they are sufficiently related such that consumers might believe they come from the same source when sold under the same or similar marks. See *On-line Careline*, 56 USPQ2d at 1475; *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989). And, as also noted above, the issue is not whether consumers will confuse the services themselves, but rather whether consumers will confuse their source. *Ox Paperboard*, 2020 USPQ2d 10878, at *5; *L’Oreal S.A. v. Marcon*, 102 USPQ2d at 1439.

Although Applicant amended its application to exclude one specific service, there are no limitations as to channels of trade or classes of consumers in the application or cited registration. We therefore presume that Applicant’s and Registrant’s services are offered in the ordinary channels of trade and offered to all the usual classes of purchasers for these services. *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *Thor Tech*, 90 USPQ2d at 1638 (“We have no authority to read any restrictions or limitations into the registrant’s description of [services].”). In addition, the third-party websites discussed above demonstrate both credit union and private student loan services are rendered to members of the general public who need credit union services and student loans.

As a result, the record shows that the respective services are sold in the same channels of trade and offered to the same consumers.

Applicant argues that it does not market its services outside of a small region comprised of four counties in northern Utah. 12 TTABVUE 15. We cannot consider the possible geographically separate uses of Applicant's and Registrant's marks under the second, third, or fourth *DuPont* factors because Applicant "seeks a geographically unrestricted registration under which it might expand throughout the United States," *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 393 (Fed. Cir. 1983), and the cited registration is also geographically unrestricted, which presumptively gives Registrant "the exclusive right to use its mark throughout the United States." *Id.* See also *In re Appetito Provisions, Inc.*, 3 USPQ2d 1553, 1554 n.4 (TTAB 1987) (the Trademark Act "accords a registrant prima facie exclusive rights in the registered mark for the goods or services recited in the registration throughout the United States regardless of its actual extent of use."); *Peopleware Sys., Inc. v. People-ware, Inc.*, 226 USPQ 320, 321 (TTAB 1985) (noting that "geographical separation of the parties' principal places of business cannot be considered to be of significance in determining registrability of applicant's mark since it seeks a geographically unrestricted registration").

Applicant argues that "the services are marketed to well-informed consumers exercising a high degree of care in their purchasing decisions." 12 TTABVUE 16. Applicant implies that because a student loan application may take two weeks to a

few months to process,³⁵ the consumer must be sophisticated. However, the record discusses potential processing time³⁶ and “intensive underwriting practices”³⁷ for the loan provider (i.e., the credit union) not the consumer. There is no evidence to demonstrate that a consumer of credit union services or student loans would be sophisticated.

Moreover, while Applicant also argues that “[a]ll credit union services are offered in the context of the credit union membership requirement,” 12 TTABVUE 17, the record demonstrates that membership is not a high bar and is often available to the general public. For example, “[s]ome credit unions just require applicants to make a small donation to a charity to become [a member] while others only accept people who: [l]ive in a particular area[, a]re employed by a certain business[, a]re connected to a local school[, b]elong to a certain labor union[, or a]re a part of another organization.”³⁸ There is no evidence of record to demonstrate that any of these categories of people are sophisticated. Indeed, members defined by geographic area would necessarily represent the general population within that area,³⁹ and we must

³⁵ See “Credit Union Student Loans: Pros and Cons | 121 Financial” (blog.121fcu.org), April 10, 2020 Office Action at 17.

³⁶ *Id.*

³⁷ See “Cooperatives Outperform In Student Lending” (creditunions.com), February 5, 2021 Request for Reconsideration at 106.

³⁸ *Id.* at 11-12.

³⁹ *Accord* February 5, 2021 Request for Reconsideration at 98 (121fcu.org: “[Becoming a member is] pretty simple and straightforward. If you live, work or attend school in one of the following 11 counties, you are eligible to join 121 Financial Credit Union.”); February 26, 2021 Request for Reconsideration Denied at 7 (creditkarma.com: “Some credit unions are very restrictive about who can join, while others are open to anyone willing to pay a membership fee.”), and 54 (depositaccounts.com: “Some qualifying associations are extremely

make our determination based on the least sophisticated consumer. *Stone Lion Capital Partners v. Lion Capital*, 110 USPQ2d at 1163 (affirming that the Board properly considered all potential investors for recited services, which included sophisticated investors, but that precedent requires consumer care for likelihood-of-confusion decision to be based “on the least sophisticated potential purchasers”). Even assuming that current or prospective students seeking to borrow money for school would exercise caution in obtaining student loans, there is no evidence that checking or savings account holders, i.e., Applicant’s customers, are particularly discriminating.

We find the services are related, travel in the same channels of trade, and are offered to the same customers who exercise only ordinary care. In view thereof, these *DuPont* factors favor a finding of likelihood of confusion.

B. The Strength of the Cited Mark

Before reaching the degree of similarity of the marks, we address Applicant’s arguments, *see* 12 TTABVUE 21-23, under the fifth and sixth *DuPont* factors which consider the strength of the cited registered mark, and the extent to which that strength may be attenuated by “[t]he number and nature of similar marks in use on similar ... goods.” *DuPont*, 177 USPQ at 567. The strength of a mark may be assessed based on its conceptual strength arising out of the nature of the mark itself and its commercial strength, derived from the marketplace recognition of the mark. *In re*

easy to join; accordingly, many people will consider joining an eligible association simply to gain access to a credit union membership.”).

Chippendales USA, Inc., 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010). For likelihood of confusion purposes, a mark’s strength “varies along a spectrum from very strong to very weak.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)). Evidence of extensive registration and use of similar marks by others in the field can be powerful evidence of a mark’s weakness. *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation v. GS Enters.*, 115 USPQ2d at 1674.

Of course, because Registrant’s mark is registered on the Principal Register, it is presumptively valid and distinctive for the identified services. Trademark Act Sections 7(b) and 33(a), 15 U.S.C. §§ 1057(b) and 1115(a); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007). Nonetheless, we may acknowledge the weakness of a registered mark in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016).

To support its argument of weakness, Applicant relies on “numerous examples of third parties using marks containing ASCENT to advertise banking and financial services on the internet,” as well as “202 active applications and registrations that include the word ASCENT,” and particularly the “27 live applications and registrations for marks that . . . include the term ASCENT used in association with

financial services or related services in Class 36.” 12 TTABVUE 21. The Examining Attorney, on the other hand, argues that most of the third-party registrations “appear to be for services that are predominantly different from those identified in” the cited registration, 14 TTABVUE 8, and that the “small number” of the registrations which are “for similar marks with similar services” should be “entitled to little weight” and are “insufficient to establish that the word[] ASCENT is weak or diluted.” 14 TTABVUE 9.

“Ascent” is defined as “the act of rising or mounting upward,” and similarly as “an advance in social status or reputation.”⁴⁰ In support of its position that the cited mark is weak and entitled only to a limited scope of protection, Applicant introduced printouts from the following internet web pages for banks and other financial-services businesses using the term ASCENT in their names or products.⁴¹

- cadencebank.com, describing Ascent Money Market account offered by Cadence Bank
- customersbank.com, describing The Ascent Money Market Savings Account offered by Customer’s Bank and using the mark



- ascentiumcapital.com, describing business financing solutions offered by Ascentium Capital LLC and using the mark



⁴⁰ We take judicial notice from the MERRIAM-WEBSTER.COM DICTIONARY, accessed September 12, 2021.

⁴¹ Exhibit B to February 5, 2021 Request for Reconsideration at 56-88.

- ascent.usbank.com, describing Ascent private capital management services offered by U.S. Bancorp and using the mark



- ascentfinancialgroup, describing wealth management services offered by Ascent Financial Group and using the mark



- ascentprocessing.com, describing payment processing services offered by Ascent Processing, Inc. and using the mark



- oneascent.com, describing financial planning and investment services offered by OneAscent Financial and using the mark



- ascentfinancial.com, describing financial planning and investment management services offered by Ascent Financial Advisors and using the mark



- ascentfinancialnetwork.com, describing independent practice compliance and operations services for financial investment consultants offered by Ascent Financial Network and using the mark



- ascentfinancialgroupllc.com, describing financial planning and investment management services offered by Ascent Financial Group and using the mark



- ascentfm.com, describing financial management services offered by Ascent Financial Management and using the mark



- ascentfinancialstrategies.com, describing financial planning and investment consultation services offered by Ascent Financial Strategies LLC and using the mark



- ascentfinancial.net, describing estate, wealth, and insurance planning services offered by Ascent Financial LLC using the mark



- ascentfinancialadvisors.com, describing financial investment services offered by Ascent Financial Advisors and using the mark



- ascentmn.com, describing financial planning services offered by Ascent Financial and using the mark



Applicant also submitted copies of the following 12 third-party use-based registrations issued to different entities for ASCENT-formative marks identifying various financial services.⁴²

Mark	Reg. No.	Relevant Services
ASCENT	5691632	Mortgage services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks
ASCENT PRIVATE CAPITAL MANAGEMENT	5930675	Various financial management, investment, planning and advisory services
ASCENT FINANCIAL PARTNERS	5064694	Financial advisory services

⁴² See Exhibit A to February 5, 2021 Request for Reconsideration at 23-55. To the extent Applicant also argued that ASCENT forms part of the mark for some pending applications, see 12 TTABVUE 21, we note that “[a]n application is not evidence of anything except that the application was filed on a certain date.” *Wet Seal, Inc. v. FD Mgmt.*, 82 USPQ2d 1629, 1634 (TTAB 2007).

Mark	Reg. No.	Relevant Services
	5565875	Various financial investment, planning, and advisory services
ASCENT TO PROSPERITY	5244905	Various financial advisory and planning services
ASCENTPAY	5997975	Financing and loan services
	5538946	Various financial advisory, planning, and management services
ASCENTIUM	4396734	Financial services, namely, loans and leases for personal property and equipment expenditures; financial services, namely, secured lending
ASCENTRIS	5056219	Private equity investments in commercial real estate for institutional and public pension clientele
ASCENT EIG	5728213	Various life insurance underwriting, brokerage, and administration services
ASCENT	5160473	Professional business conferences in the field of mortgage loan origination software and related services
ASCENT	5354725	Software as a service featuring software for management and automation of regulatory compliance in the financial services industry

Applicant argues that the financial services offered by these third parties under the various ASCENT-formative marks are similar and related to Applicant's credit union services and Registrant's student loan services. *See* 15 TTABVUE 3-4. To demonstrate the similarity of the third-party services to the cited student loan services, so that we may consider the evidence of ASCENT weakness under the fifth and sixth *DuPont* factors, Applicant points to the third-party registrations and uses relied on by the Examining Attorney in support of the second *DuPont* factor (i.e., to demonstrate that credit union and student loan services often emanate from the same source). We find that Applicant has demonstrated that the types of financial services

offered and registered by third parties under ASCENT-formative marks are similar to Registrant's student loan services so that we may consider those third-party marks under the fifth and sixth *DuPont* factors. *See Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693-94 (Fed. Cir. 2018) (“[T]he controlling inquiry [under the sixth *DuPont* factor] is the extent of third-party marks in use on “similar” goods or services.”). *Cf. i.am.symbolic*, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration).

We find that the foregoing evidence establishes that ASCENT-formative marks are both conceptually and commercially weak and, therefore, are entitled to a narrow scope of protection.

Regarding conceptual strength, the fact that ASCENT-formative marks have been registered by different financial service providers indicates that ASCENT in this context suggests increasing, raising, or advancing one's financial goals. This is reinforced by the multiple mountain-related ASCENT logo marks which also suggest climbing toward one's goals. The dictionary definition of “ascent” further supports the concept of rising, mounting, or advancing wealth. Thus, we find that ASCENT-formative marks have conceptual weakness in association with financial services. *See Juice Generation*, 115 USPQ2d at 1675 (third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive

meaning, leading to the conclusion that that segment is relatively weak.”) (internal quotation marks omitted). *See also Jack Wolfskin*, 116 USPQ2d at 1136.

Regarding commercial strength, the evidence establishes that it is common for financial service providers, including lenders, to comprise or incorporate ASCENT-formative terms. As noted above, these financial service companies suggest and emphasize increasing wealth and opportunity, and attaining goals. The number of third-party marks used in connection with related financial services is “powerful” evidence that consumers encountering marks in the financial field have become conditioned to distinguish marks incorporating ASCENT-formative terms based on minute differences including the addition of descriptive and generic terms such as “financial advisors,” “financial network,” “financial management,” “financial strategy,” “processing,” etc. *Juice Generation*, 115 USPQ2d at 1674 (extensive third-party use and registration is “powerful on its face”); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565-66 (TTAB 1996) (“Evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to other elements of the marks as a means of distinguishing the source of the goods or services in the field.”).

Although the Examining Attorney’s brief recites case law related to third-party uses, it does not address the third-party use examples of record which are integral to Applicant’s arguments of weakness; instead, it discusses only the third-party registrations. *See* 14 TTABVUE 8-9. However, examples of third-party use indicate whether a mark or portion of a mark is commercially weak. In *Juice Generation*, the

Court reiterated that evidence of third-party use of similar marks on similar goods (or services) can show that a mark is relatively weak and entitled to a narrow scope of protection. *Juice Generation*, 115 USPQ2d at 1674. The Court went on to say that despite the lack of specifics as to the extent and impact of third-party use, the “fact that a considerable number of third parties use similar marks was shown in uncontradicted testimony.” *Id.* See also *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1072 (TTAB 2011) (stating internet printouts “on their face, show that the public may have been exposed to those internet websites and therefore may be aware of the advertisements contained therein”). Thus, the evidence regarding third-party use of ASCENT-formative marks is relevant regardless of whether registration was sought.

Because the evidence shows that ASCENT has conceptual weakness for financial services, and that consumers have been exposed to numerous ASCENT-formative marks used in association with related financial services, we find that the cited mark falls on the lower end of the “spectrum from very strong to very weak,” *Joseph Phelps Vineyards*, 122 USPQ2d at 1734, and that minute differences between ASCENT-formative marks used in association with financial services are sufficient to distinguish them. See *Palm Bay*, 73 USPQ2d at 1694 (“The purpose of [an applicant] introducing third-party uses is to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions.”). Accordingly, the fifth and sixth *DuPont* factors concerning the strength (or in this case, the weakness

of the term ASCENT) supports a finding that confusion is unlikely with regard to the cited registration for the stylized, blue-and-white mark **Ascent** for “providing lease financing for private student loans.”

C. Similarity of the Marks

Next, we turn to the first *DuPont* factor which considers the “similarities or dissimilarities of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Detroit Athletic Co.*, 128 USPQ2d at 1051 (quoting *DuPont*, 177 USPQ at 567). The emphasis of our analysis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). Further, “[n]o element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.” *In re Electrolyte Labs. Inc.*, 913 F.2d 930, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ

35 (CCPA 1974)). Nonetheless, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Stone Lion Capital Partners v. Lion Capital*, 110 USPQ2d at 1161.

Applicant's mark is ASCENT FEDERAL CREDIT UNION in standard characters, and the cited mark is the stylized, blue-and-white **Ascent**. There is no question that the literal element (i.e., ASCENT) of the cited mark is incorporated within Applicant's mark.

The Examining Attorney argues that while Applicant's mark contains the additional wording FEDERAL CREDIT UNION, such wording is generic for Applicant's services and therefore has less significance; and, moreover, "the addition of a term to a registered mark generally does not obviate the similarity between the marks." 14 TTABVUE 7. The Examining Attorney also argues the slight stylization of Registrant's mark is of no consequence because Applicant seeks to register its mark in standard characters. 14 TTABVUE 6. On the other hand, Applicant argues that "[e]ven if 'FEDERAL CREDIT UNION' is descriptive, it cannot be ignored and must be given appropriate weight in evaluating the commercial impression of Applicant's [m]ark. One cannot deny that the consumer is faced with three additional terms when viewing Applicant's [m]ark, and that those terms have an impact on the consumer's perception of the mark. [Moreover, t]he word 'ASCENT' is not particularly strong or distinctive. It is commonly used in association with . . . financial services." 12 TTABVUE 20-21 (internal citation omitted).

We agree with the Examining Attorney that the marks contain the identical literal term ASCENT, and that marks may be confusingly similar in sound and appearance when an identical term appears in the compared marks and creates a similar overall commercial impression. *See* 14 TTABVUE 7. Such a similarity in sound, appearance, or commercial impression alone may be sufficient to support a finding that the compared wording is confusingly similar. *See In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.”) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd mem.*, 777 F. App'x. 516 (Fed. Cir. 2019). However, as we found above, ASCENT is weak for financial services and consumers are able to distinguish among numerous ASCENT financial service providers based solely on the presence of additional wording – even generic wording. Thus, the facts that “ascent” in **Ascent** and ASCENT FEDERAL CREDIT UNION may be pronounced the same and have a similar appearance are not enough in this case, with the evidence of record, to find that the marks are sufficiently similar to support a finding of likely confusion. Rather, given that Applicant’s mark contains the additional wording FEDERAL CREDIT UNION which designates Applicant’s entity, we think it likely that consumers would be able to distinguish the marks based on this difference.

Accordingly, we find that the similarity of the marks is a factor that does not weigh in favor of a finding of likelihood of confusion.

D. Summary

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Here, although the services are related and travel in the same trade channels to the same classes of consumers, the term ASCENT is weak when used in connection with financial services. The ubiquity of ASCENT in the financial industry and the additional wording present in Applicant’s mark outweigh the similarities between the services, trade channels, and consumers. Accordingly, we find there is no likelihood of confusion between Applicant’s mark ASCENT FEDERAL CREDIT UNION and the mark **Ascent** in the cited registration.

II. Decision

The refusal to register Applicant’s mark ASCENT FEDERAL CREDIT UNION is reversed.